

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

KORYN DeYOUNG,

Plaintiff,

v.

SALON MIRO, et al.,

Defendants.

No. C05-5101RBL

ORDER GRANTING IN  
PART AND DENYING IN  
PART PLAINTIFF'S  
MOTION FOR  
SUMMARY JUDGMENT

This matter is before the court on Plaintiff DeYoung's Motion for Summary Judgment. [Dkt. #16]. Plaintiff sues her former employer, Salon Miro<sup>1</sup> and its owner, Ronnie Vinton, under the Federal Fair Labor Standards Act and the Washington Minimum Wage Act. She has voluntarily dismissed her breach of contract claim. Defendant has asserted counterclaims for conversion, defamation, and tortious interference.

Plaintiff seeks summary judgment on all her claims, including an award of damages, fees, and costs. She also seeks dismissal of Defendant's counterclaims.

The basic facts are agreed upon: Plaintiff was employed by Salon Miro as a manicurist from

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<sup>1</sup>It is not disclosed whether Salon Miro is a corporation, a sole proprietorship, or some other business entity.

1 November 2003 through January 9, 2005. She was paid on a commission basis, initially 43% and later  
2 50%, along with 10% on products. She was ultimately terminated, and she applied for unemployment.  
3 That claim was denied, but on appeal Plaintiff was determined to be eligible for those benefits.  
4

5 Plaintiff claims that during her employment she consistently earned less than the minimum wage  
6 (\$7.01 in 2003; \$7.16 in 2004, and \$7.35 in 2005). She seeks reimbursement for the difference between  
7 her pay and the minimum wage, penalties, attorneys' fees and costs.

8 Defendant does not directly dispute that he paid the Plaintiff on a commission basis, and has  
9 suggested that because he did so, he was not constrained by the state and federal regulatory schemes  
10 regarding minimum hourly wages. There are some exceptions to these regulatory schemes, but the plaintiff  
11 has shown that they do not apply (and the defendant has not shown that they do). The Plaintiff's claim that  
12 her commission-based compensation was required to equal the minimum hourly wage is correct.  
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14 Defendant also argues (and there is support in the record, in the materials submitted by the Plaintiff,  
15 including the underlying employment benefits proceedings) that Plaintiff did not charge her clients for some  
16 of the services she provided. Defendant's counterclaim for conversion is based upon this allegation.  
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18 The Plaintiff's evidence of the number of hours for which she should be deemed to have earned the  
19 minimum wage consist of a lengthy series of what appear to be work schedules. They reflect the number  
20 of hours that Plaintiff was "scheduled to work" over various pay periods. Plaintiff claims that she was  
21 "required" to be present when she was scheduled to work, but does not specifically testify that she was  
22 present for each of the hours reflected on the schedules attached to her motion.  
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24 She argues that she was underpaid \$5980.07 (including overtime calculated on the basis of the  
25 schedules), and seeks double damages plus attorney fees and costs. The method of calculation for this  
26  
27  
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1 claimed principal amount is not demonstrated. The defendant alleges<sup>2</sup> (and plaintiff admits) that at least  
2 some portion of her compensation was made in the form of cash tips. In fact, a notation in a part of the  
3 record indicates that credit card tips are reflected in Plaintiff's earnings, but cash tips are not. No effort is  
4 made to calculate the amount of cash tips received by the Plaintiff, or the impact that such tips would have  
5 on her hourly wage, if they were calculated.  
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7 Finally, the record indicates that at least part of the dispute between these parties related to her  
8 provision of "free" services to her customers. Taken in the light most favorable to the Defendant, the  
9 evidence supports this allegation. Presumably, had she charged all of her clients for her services, Plaintiff  
10 would have earned more than she claims she did. For these reasons, Plaintiff's claim that she earned less  
11 than the minimum wage over various pay periods, and the amount of damages she may be entitled to,  
12 present questions of fact, and her claims cannot be determined as a matter of law on this record.  
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14 The court therefore rules on the Plaintiff's Motion as follows:

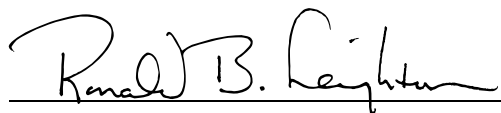
- 15 1. The Federal Fair Labor Standards Act and the Washington Minimum Wage Act apply to  
16 Plaintiff's claims, and the fact that she was a commission -based employee does not negate  
17 Defendant's obligations to pay the minimum wage.  
18
- 19 2. The fact and amount of damages suffered by the plaintiff (as well as the amount of fees and  
20 costs to which she is entitled) cannot be determined as a matter of law on the evidence  
21 before the court.  
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- 23 3. Defendant's counterclaims for tortious interference and defamation are unsupported and are  
24 dismissed with prejudice. Plaintiff's breach of contract claim is also dismissed on her own  
25 motion. Defendant's conversion counterclaim survives.  
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27 <sup>2</sup>Plaintiff objects to the letter form of the pro se defendants' response to its motion. The Plaintiff's  
28 objection is noted but the fact the defendant's response is in the form of a letter will not preclude the court  
from considering it.

1 The parties are encouraged to honor their Rule 39.1 obligations. If they cannot resolve the matter  
2 there, a trial will follow on the claims and issues described above.

3 DATED this 10<sup>th</sup> day of November, 2005.  
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8 RONALD B. LEIGHTON  
9 UNITED STATES DISTRICT JUDGE  
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